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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 JUAN EVANGELISTA CASTRO,
12 Petitioner,
13 v.
14 BRYAN BIRKHOLZ, Warden,
15 Respondent.
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Case No. 2:24-cv-04910-AB-KES

ORDER ACCEPTING REPORT AND
RECOMMENDATION OF U.S.
MAGISTRATE JUDGE

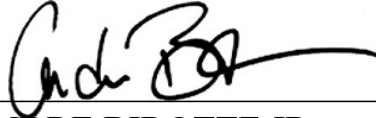
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18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition (Dkt. 1), the
19 other records on file herein, and the Report and Recommendation of the United
20 States Magistrate Judge (Dkt. 23). Further, the Court has engaged in a de novo
21 review of those portions of the Report and Recommendation to which objections
22 (Dkt. 25, 26) have been made. The Court accepts the report, findings, and
23 recommendations of the Magistrate Judge.

24 IT IS THEREFORE ORDERED that Respondent's motion to dismiss the
25 Petition with prejudice (Dkt. 14) is GRANTED and Petitioner's Motion to Expedite
26 (Dkt. 22) is GRANTED IN PART and DENIED IN PART.

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1 As a federal prisoner proceeding under 28 U.S.C. § 2241, Petitioner is *not*
2 required to obtain a certificate of appealability (“COA”) in order to appeal to the
3 United States Court of Appeals for the Ninth Circuit in this case. See Harrison v.
4 Ollison, 519 F.3d 952, 958 (9th Cir. 2008) (holding that the plain language of 28
5 U.S.C. § 2253(c)(1) does not require federal prisoners bringing § 2241 petitions to
6 obtain a COA in order to appeal, unless the § 2241 petition “is merely a ‘disguised’
7 § 2255 petition”); see e.g., Tomlinson v. Caraway, No. 14-cv-020094-VBF-KK,
8 2014 U.S. Dist. LEXIS 131448 at *2, 2014 WL 4656432 at *1 (C.D. Cal. Sept. 16,
9 2014) (adopting report and recommendation and noting that petitioner in federal
10 custody was not required to obtain a COA to appeal the denial of his § 2241
11 petition).

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13 DATED: March 21, 2025



ANDRE BIROTTE JR.
UNITED STATES DISTRICT JUDGE